Supreme Court, U.S.
FILED

No. 03-03 496 SEP 29 2003

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

CAROLINE ROGERS,

Petitioner,

v.

HORSESHOE ENTERTAINMENT,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

JILL CRAFT
Counsel of Record
CRAFT & CRAFT
509 St. Louis Street
Baton Rouge, LA 70802-6158
(225) 343-7753

GEORGE G. CABALLERO
WILLIAM W. THIES
CABALLERO LAW FIRM
8658 Quarters Lake Road
Baton Rouge, LA 70809
(225) 292-4407

KYLE KERSHAW
KERSHAW & SULZER
212 Laurel Street
Baton Rouge, LA 70801
(225) 336-9600

Attorneys for Petitioner

182886

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

52 pp

QUESTION PRESENTED

The special venue statute of 42 U.S.C. § 2000e-5(f)(3) expressly grants plaintiffs alleging claims under Title VII and the American with Disabilities Act to bring such an action in any judicial district in the State in which the unlawful employment practice is alleged to have been committed.

The question presented is whether the special venue statute of 42 U.S.C. § 2000e-5(f)(3) permits a plaintiff to bring a claim under Title VII or the American with Disabilities Act in any judicial district of a state without being removed on grounds of forum shopping or forum non conveniens where the defendant has not meet its burden of proving an abuse of discretion on the part of a lower court in sustaining the plaintiff's choice of venue.

TABLE OF CONTENTS

	Page
Question Presented	i
Table of Contents	ii
Table of Cited Authorities	iii
Table of Appendices	v
Opinions Below	1
Statement of Jurisdiction	1
Statutory Provisions Involved	1
Statement of the Case	2
Reasons for Granting the Petition	10
I. The Decision Below Sets A National Rule Meriting This Court's Immediate Intervention Because It Will Cause Irreparable Harm To Plaintiffs Bringing Suit Under 42 U.S.C. § 2000e-5(f)(3).	10
II. Certiorari Is Warranted Because The Decision Below Conflicts With Decisions Of Other Circuits.	15
Conclusion	18

TABLE OF CITED AUTHORITIES

Page

Cases:

EEOC v. Mustang Mobile Homes, Inc., 88 F. Supp.2d 722 (W.D. Tex. 1999) 6

Fletcher v. Southern Pacific Transp. Co., 648 F. Supp. 1400 (E.D. Tex. 1986) 7

Garner v. Wolfinbarger, 433 F.2d 117 (5th Cir. 1970) 8

Garus v. Rose Acres Farms, Inc., 839 F. Supp. 563 (N.D. Ind. 1993) 9

General Electric Credit Corp. v. James Talcott, Inc., 271 F. Supp. 699 (S.D.N.Y. 1966) 11

Gilbert v. General Elec. Co., 347 F. Supp. 1058 (E.D. Va. 1972) 9, 11, 13

Gundle Lining Const. Corp. v. Fireman's Fund Ins. Co., F. Supp. 1163 (S.D. Tex. 1994) 6

Hall v. Environmental Chem. Co., 64 F. Supp.2d 638 (S.D. Tex. 1999) 6

Peteet v. Dow Chemical Company, 868 F.2d 1428, 1436 (5th Cir.), *cert. denied*, 493 U.S. 935, 110 S. Ct. 328, 107 L. Ed. 2d 318 (1989) 6, 11

Cited Authorities

Page

Richardson v. Alabama State Bd. Of Educ., 935 F.2d 1240 (11th Cir. 1991) 9, 10, 13, 15, 18

SEC v. Wimer, 75 F. Supp. 955 (W.D. Pa. 1948) ... 12

Thurman v. Martin Marietta Data Systems, 596 F. Supp. 367 (M.D. Pa. 1984) 9

Statutes:

28 U.S.C § 1404(a) ..... *passim*

42 U.S.C. § 2000e-5(f)(3) ..... *passim*

TABLE OF APPENDICES

Page

Appendix A — Order Of The United States Court Of Appeals For The Fifth Circuit And Grant Of Panel Rehearing Dated And Filed July 1, 2003 ... 1a

Appendix B — Dissenting Opinion Of Circuit Judge Benavides Dated And Filed September 10, 2002 ..... 17a

Appendix C — Ruling On Motion To Transfer Of The United States District Court For The Middle District Of Louisiana Dated And Filed July 2, 2002 ..... 23a

Petitioners respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The district court's opinion (per Tyson, R.E.) denying respondents' Motion to Transfer (Pet.App. 23a-27a) is not otherwise published. The court of appeals opinion (per DeMoss, H.R. joined by Barksdale, R.H.) granting respondents Petition for Writ of Mandamus and reversing (Pet.App. 1a-13a) is published at 305 F.3d 354 and the original dissent (per Benavides, F.P. Pet.App. 17a-22a) is published at 305 F.3d 354, 360-362. The court of appeals per curiam opinion treating Petition for Rehearing En Banc as Petition for Panel Rehearing and granting Petition for Panel Rehearing (Pet.App. 15a-16a) is not otherwise published. The court of appeals substituted opinion (per DeMoss, H.R. joined by Barksdale, R.F.) granting respondents Petition for Writ of Mandamus and reversing (Pet.App. 1a-13a) is not otherwise published and the revised dissent (per Benavides, F.P. Pet.App. 14a) is not published.

STATEMENT OF JURISDICTION

The court of appeals entered its opinion and order on July 1, 2003. Petitioners invoke this court's jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The provisions of the special venue statute of 42 U.S.C. § 2000e-5(f)(3) are reprinted at page 2 and 28 U.S.C. § 1404(a) is reprinted at page 3.

STATEMENT OF THE CASE

In September of 1997, petitioner was employed as a beverage server at the Horseshoe Casino in Bossier City, Louisiana. During the course of her employment with the defendant she was subject to various forms of sexual discrimination prohibited under Federal Law. Suit was filed March 22, 2001 in the Middle District Court of Louisiana pursuant to 42 U.S.C. § 2000e-5(f)(3) as it would be impossible for petitioner to receive a fair trial in the respondents back yard in the Western District of Louisiana.

42 U.S.C. § 2000e-5(f)(3) reads in pertinent:

> (3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this subchapter. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of Title 28, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action may have been brought.

On or about June 12, 2001 Horseshoe filed a Motion to Transfer in Middle District Court pursuant to 28 U.S.C. § 1404(a) alleging a more convenient forum.

28 U.S.C. § 1404(a) reads in pertinent:

> (a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.

By Order entered on July 2, 2002, the District Court denied Horseshoe's Motion to Transfer the matter to the Western District of Louisiana based on Judge Ralph Tyson's opinion that although there are conflicting factors for determining venue under Section 1404 "the possibility of delay or prejudice if transfer is granted, the location of counsel, and plaintiff's choice of forum seem to dictate that the requested transfer be denied". Horseshoe then applied for a Writ of Mandamus to the Fifth Circuit Court of Appeals. A three-judge panel consisting of Judges Barksdale, DeMoss, and Benavides heard the matter filing written reasons for judgment on September 10, 2002 overturning the decision of the district court and ordered venue transferred to the Western District of Louisiana based on the majority opinion that the many factors determinative of venue weighed in favor of transferring venue to the Western District court of Louisiana. Judge Benavides dissented providing written reasons for his dissent. Pet.App. 17a-22a. An Order consistent with the majority's decision was filed on September 19, 2002. On September 27, 2002 a Petition for En Banc Review of the three judge panels ruling was filed. On July 1, 2003 a per curiam opinion was issued treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing granting the

Petition for Rehearing. Pet.App. 15a-16a. After review, the three judge panel withdrew their previous opinion filed under date of September 10, 2002, and published at 305 F.3d 354, *et seq.* and filed a new opinion adopting and substituting their previous opinion with the only changes being the courts recitation of the "Pfizer Standards",[1] the deletion and substitution of language further identified in footnote five, and a revised dissent by Judge Benavides. Pet. App. 14a.

This holding merits this Court's immediate review because it will require plaintiffs to litigate matters in the defendants back yard disregarding their right to choose a forum under the special venue statute of 42 U.S.C. § 2000e-5(f)(3) which permits a plaintiff alleging this type of action to be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed. Further, if a claim brought under 42 U.S.C. § 2000e-5(f)(3) is required to withstand a challenge under 28 U.S.C. § 1404(a) based on the convenience of the parties and witnesses, and in the interest of justice then the burden on the party requesting such a transfer must be the highest of

---

1. The Fifth Circuit Court added the following language in their substituted opinion. Pet.App. 5a-6a:

Neither Garner nor Pfizer have been overruled or criticized by this Court; and from these cases we draw the following standards (the Pfizer Standards) to be applied by our Court in deciding the propriety or not of a district court's ruling on a motion to transfer under Section 1404(a):

a.) Did the district court correctly construe and apply the relevant statutes;

b.) Did the district court consider the relevant factors incident to ruling upon a motion to transfer; and

c.) Did the district court abuse its discretion in deciding the motion to transfer.

standards otherwise the special venue statute envisioned by congress and designed for the protection of certain plaintiffs has no teeth and is without reason.

1. Petitioner is a female resident of the Western District of Louisiana who was an employee of the defendant as a beverage server. While in the course and scope of her employment petitioner was subjected to sexual innuendos, and sexually orientated remarks of a most egregious nature from the defendant's management on an almost daily basis. Additionally, petitioner was a "qualified individual with a disability" within the meaning and intent of the law. At all times the defendant knew petitioner was disabled, regarded her as disabled and maintained a record of her impairment. The harassment and discrimination continued until July 17, 2000 when Petitioner was constructively discharged.

2. Respondent is a Louisiana partnership operating a casino in Bossier City, Louisiana in the Western District of Louisiana and was at all times the employer of petitioner and those employees subjecting the petitioner to the unwarranted, unsolicited, and unprovoked sexual advances and harassment. The respondent contends that the filing of the petitioner's claim in the Middle District of Louisiana in Baton Rouge, Louisiana is tantamount to forum shopping. Respondent further contends that this matter should only be litigated in the Western District of Louisiana under 28 U.S.C. § 1404(a) as Shreveport, Louisiana is the more convenient forum.

3. The Middle District court considered several factors when denying Horseshoe's claim including the mover's burden of showing why a transfer of venue under Section 1404(a) is warranted, movants necessity of demonstrating

that justice weighs substantially in favor of transfer, the balance of convenience, and that the court must determine if a transfer would make it substantially easier for the parties to litigate the case. Pet.App. 25a (citing *Gundle Lining Const. Corp. v. Fireman's Fund Ins. Co.*, F. Supp. 1163, 1165 (S.D. Tex. 1994). Judge Tyson also stated in his opinion "that trial courts are to consider all relevant factors to determine whether or not on balance the litigation would more conveniently proceed and the interest of justice be better served by transfer to a different forum. *Peteet v. Dow Chem. Co.*, 868 F.2d 1428, 1436 (5th Cir.), *cert. denied*, 493 U.S. 935, 110 S. Ct. 328, 107 L. Ed. 2d 318 (1989) (citation omitted).

Judge Tyson considered the following additional factors when determining the Middle District of Louisiana was the proper venue surviving a forum non conveniens challenge: (1) the availability and convenience of witnesses; (2) the availability and convenience of the parties; (3) the place of the alleged wrong; 4) the location of books and records; (5) the possibility of delay if prejudice is granted; (6) the location of counsel; and (7) the plaintiff's choice of forum. *EEOC v. Mustang Mobile Homes, Inc.*, 88 F. Supp.2d 722, 725 (W.D. Tex. 1999); *Hall v. Environmental Chem.* Co., 64 F. Supp.2d 638, 644 (S.D. Tex. 1999) Pet.App. 25a-26a. After considering all of the above factors, Judge Tyson ruled:

> [s]ince the relevant factors appear to be evenly divided between the two alternatives, the Court finds that defendant has failed to carry its burden of establishing that justice weighs substantially in favor of the requested transfer of venue. Therefore, transfer of this litigation is not warranted and plaintiff's choice of forum will be honored.

Pet.App. 27a.

4. On respondents' appeal, the Fifth Circuit reversed the district court finding that the "District Court erred in concluding that the relevant factors appear to be evenly divided between the two alternatives and that in such circumstance the plaintiff's choice of forum will be honored (citing the Middle District)" for the following summarized reasons: (1) The factor of "location of counsel" is irrelevant and improper for consideration in determining the question of transfer of venue[2];

---

2. Judge Benavides disagreed with the majority citing *Fletcher v. Southern Pacific Transp. Co,*. 648 F. Supp. 1400, 1401 (E.D. Tex. 1986) (voluminous internal citations omitted) and the nine factors traditionally employed by Courts to determine whether to transfer venue and noted with particularity the majorities failure to acknowledge the location of counsel as a factor:

(1) Plaintiff's choice of forum

(2) The availability of compulsory process for the attendance of unwilling witnesses.

(3) The cost of obtaining the attendance of willing witnesses.

(4) The accessibility and location of sources of proof.

(5) The location of counsel

(6) The relative congestion of the courts' dockets.

(7) Accessibility of the premises to jury view.

(8) Relation of the community in which courts and the jurors are required to serve the occurrence giving rise to the suit.

(9) The time, cost, and ease with which the trial can be conducted, and other practical considerations relative to the trial.

(2) the Middle District Court failed to consider the location of books and records and where they are kept[3]; (3) the Middle District Court erred in considering and giving weight to the factor of "possibility of delay or prejudice if transfer is granted". And most importantly the Court of Appeals reasoned; (4) the Middle District Court erred in attributing decisive weight to the plaintiff's choice of forum. The majority reasoned that "the plaintiff's choice of forum is clearly a factor to be considered but in and of itself it is neither conclusive not determinative."[4] The majority continued:

> [o]bviously, to be considered at all, the plaintiff's choice of forum must be one which is permitted under the relevant venue statute; and we have serious doubts that the plaintiff's selection of the Middle District of Louisiana was a proper venue choice in this case . . . Plaintiff postulates that this reading of the statutory language was intended by congress to permit plaintiffs in employment discrimination cases to sue their employer in judicial districts in which their employer had no connection or involvement whatsoever in order to assure that "jury pools" were not tainted by the employer's presence in the district. However, neither the plaintiff nor the Middle District Court favored us with any case citation . . . which adopts this reading. Fixing venue on a statewide basis

---

3. The court of appeals failed to recognize that discovery is complete and all documents, books, and records necessary for the litigation of this matter are in the possession of counsel in Baton Rouge, Louisiana.

4. The majority citing: *Garner v. Wolfinbarger*, 433 F.2d 117, 120 (5th Cir. 1970).

> would create a field day for forum shopping by plaintiffs.

Judge Benavides rebutted the rationale of the majority in his dissent where he opined:

> the plain meaning of the relevant special venue statute, codified at 42 U.S.C. section 2000e-5(f)(3), makes clear that venue is proper in *any* judicial district in any state in which the unlawful employment discrimination occurred, which, here, includes the Middle District. *See* 42 U.S.C. section 2000e-5(f)(3) (noting that venue of Title VII suit lies in "any judicial district in the State in which the unlawful employment practice is alleged to have been committed . . . Thus, given the plain meaning of the special venue statute, venue is proper in any district in Louisiana, the state in which the alleged discrimination occurred. This sound result is neither novel nor unprecedented. *See, e.g., Richardson v. Alabama State Bd. of Educ.*, 935 F. 2d 1240, 1248 n.11 (11th Cir. 1991) ("Since the alleged discrimination took place in Georgia, appellants were free to bring suit in any of the state's three federal judicial districts."); see also *Garus v. Rose Acres Farms, Inc.*, 839 F. Supp. 563 (N.D. Ind. 1993); *Gilbert v. General Elec. Co,*. 347 F. Supp. 1058 (E.D. Va. 1972). Cf. *Thurman v. Martin Marietta Data Systems*, 596 F. Supp. 367 (M.D. Pa. 1984)."

5. This petition for a writ of certiorari followed.

REASONS FOR GRANTING THE PETITION

The petition should be granted for two reasons. *First*, the Fifth Circuit's judgment, establishes a new interpretation of the special venue statute of 42 U.S.C. § 2000e-5(f)(3) thereby fundamentally changing existing law affording Title VII plaintiffs the right to select the forum within the state. The majority of panelists further erred by transferring venue to the Western District Court of Louisiana as justice mandates the plaintiff not be required to litigate her sexual discrimination case under Title VII and the ADA in the defendant's "back yard" when the special venue statute was expressly enacted by Congress to prevent such an injustice.

Second, the Fifth Circuit's decision conflicts with the authoritative decisions of other United States Courts of Appeals addressing the issue. The majority decision is adverse to *Richardson v. Alabama State Bd. of Educ.*, 935 F.2d 1240, 1248 n.11 (11th Cir. 1991) creating a split in the federal circuit courts.

I. The Decision Below Sets A National Rule Meriting This Court's Immediate Intervention Because It Will Cause Irreparable Harm To Plaintiffs Bringing Suit Under 42 U.S.C. § 2000e-5(f)(3).

Plaintiffs have the right to choose their forum and in this case the majority panel of the of the Fifth Circuit Court of Appeals erred in ruling that the Middle District was incorrect in honoring the plaintiff's choice of forum. The purpose of 42 U.S.C. § 2000e-5(f)(3) is to protect a special class of plaintiffs who bring suit against defendants with unlawful employment practices. 42 U.S.C. § 2000e-5(f)(3), reads in pertinent:

> (3) Each United States district court and each United States court of a place subject to the jurisdiction of

> the United States shall have jurisdiction of action brought under this title. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed . . .

Clearly, the Middle District of Louisiana is a place of proper venue for applicants' action. Applicant contends the unlawful employment practices occurred in Louisiana. As the plaintiff in an employment discrimination action under Title VII and the ADA, she is entitled to select her forum within the state of Louisiana within which to bring her action. Applicant selected the Middle District to receive a fair and impartial jury. In *Peteet v. Dow Chemical Company*, 868 F.2d 1428, 1436 (5th Cir. 1989), the Fifth Circuit Court recognized "the plaintiff is generally entitled to choose the forum." This premise is especially true where, as in this case, the specific venue provisions of Title VII and the ADA clearly afford the plaintiff that right.

In *Gilbert v. General Elec. Co.*, 347 F. Supp. 1058 (E.D. Va. 1972) citing *General Electric Credit Corp. v. James Talcott, Inc.*, 271 F. Supp. 699 (S.D.N.Y. 1966) the court reviewed and interpreted the special venue statute. That court looked to the legislative history in an effort to ascertain whether any particular venue consideration, apart from 28 U.S.C. § 1404, were intended by Congress to allow plaintiffs the right to choose venue anywhere within the state. The court reasoned:

> The confusion with respect to this section arises from the words: . . . may be brought in any judicial district *in the State* in which the unlawful employment practice is alleged to have been

committed. If the phrase "in the state" is omitted, the section clearly means that actions shall be brought in the particular district which is the situs of the act complained of. Addition of the phrase "in the state" can result in an interpretation that the action must be brought either (1) anywhere in the appropriate state, or, (2) as if the phrase were omitted, only in the particular judicial district. The latter interpretation treats the phrase "in the state" as a surplusage without syntactical effect. General venue considerations would, without more, cause the Court to adopt the latter interpretation and to attribute the equivocal wording to poor draftsmanship. However, as heretofore noted, this is not a general venue statute and usual venue considerations do not apply, see *SEC v. Wimer, 75 F. Supp. 955, 963 (W.D. Pa. 1948).* Moreover, legislative history shows that the phrase "in the state" was *added* by the Senate to the original House version which omitted it, 110 Cong. Rec. 2511, col. 3; 110 Cong. Rec. 12814, and said addition was reflected in the remarks of Senator Humphrey during floor debate, 110 Cong. Rec. 12723, col. 3. It is apparent, therefore, that the phrase was purposely added and not merely a product of poor draftsmanship. Accordingly, the Court concludes that the phrase must be given full syntactical weight in upholding plaintiffs' contention that the section provides for a forum in any part of the state.

The court continued:

[W]hile the Court finds disturbing the suggestion that litigants may so blatantly engage in forum shopping, it does not seem inconsistent with

> Congress' militant approach to affording citizens full redress of civil rights grievances to allow plaintiffs a particularly wide latitude in choosing the situs of their litigation. Such latitude affords greater convenience to plaintiffs and enables them to avoid potential local economic and political pressures which might be believed to serve to hinder a trial judge's efforts to maintain an unfettered, impartial atmosphere.

Judge Benavides in dissent agreed with the *Gilbert* decision stating that "given the plain meaning of the special venue statute, venue is proper in any district in Louisiana, the state in which the alleged discrimination occurred. This sound result is neither novel nor unprecedented" citing *Richardson*, *supra.* Pet.App. 19a-20a.

The genesis for the venue rule in Title VII litigation is simple. In 1964 when the Civil Rights Act became law, the prevailing concern in this country was the enforcement of the equal protections of the laws and the protection of the rights of all persons to be treated equally and fairly in the workplace regardless of gender, race, national origin, or religion. In attempting to enact an enforcement mechanism that was both sensible and just, Congress saw fit to accord discrimination litigants a choice of forums to avoid the litigation of such sensitive matters in the employer's "back yard". In this case, Horseshoe is one of the largest employers in the Shreveport/Bossier area of the Western District of Louisiana. Due to Horseshoe's economic and employment contribution, high public profile, and extensive marketing budget in the Shreveport/Bossier community it would be impossible for the plaintiff to receive a fair trial from the Western District venire.

Requiring the plaintiff to litigate the case in Shreveport disregards the fundamental purpose of the special venue statute. The law only requires that venue be proper and it is not improper just because it is not the most convenient forum. According to the plain language of the special venue statute venue was proper in the Middle District. Transferring venue to the Western District based on the reasoning of the majority would change existing precedence and create a new standard of review requiring matters to be litigated in the most convenient forum and give little to no deference to the plaintiff's choice of forum. Further, a contrary interpretation renders this portion of the special venue statute superfluous. Simply put, 42 U.S.C. § 2000e-5(f)(3) is a "special venue statute". The name implies that a plaintiff fitting this special protected class has a greater right to bring a claim in a venue other than where the defendant is located or where the alleged act occurred. Accordingly, the plaintiff's right to choose a forum contemplated by the special venue statute is not forum shopping and should be respected.

It appears Congress did initially intend for the 42 U.S.C. § 2000e-5(f)(3) to be susceptible to a Section 1404(a) challenge. However, a forum non conveniens challenge to a special venue statute which allows a plaintiff to bring suit in any forum in a state would create a Section 1404(a) challenge to every suit that is filed in any venue other than where the defendant is located and doing business. Obviously, Congress intended to provide certain plaintiffs a special venue right.

II. Certiorari Is Warranted Because The Decision Below Conflicts With Decisions Of Other Circuits.

The proceeding involves a question of exceptional importance as the panel decision is contrary to *Richardson v. Alabama State Bd. of Educ.*, 935 F.2d 1240, 1248 n.11 (11th Cir. 1991) creating controversy as to the interpretation of the special venue statute necessitating the full courts consideration. 42 U.S.C. § 2000e-5(f)(3), in pertinent part reads:

> (f)(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of action brought under this title. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed...

In *Richardson*, the appellants argued that the district court erred by not granting their motion to transfer the case from the Middle District of Alabama to the Northern District where all the parties were located and the alleged harm occurred. The facts in *Richardson* are identical to those in this case. In *Richardson* the plaintiff's choice of venue was upheld by the Eleventh Circuit as the court ruled not to transfer venue. The Eleventh Circuit Court concluded the Title VII venue provisions provide for filing "in any judicial district in the State in which the unlawful employment practice is alleged to have been committed [or] in the judicial district in which the employment records relevant to such practice are maintained and administered." The Court adopted the plain meaning interpretation of 42 U.S.C. § 2000e-5(f)(3) allowing venue in any judicial district within the forum state denying the appellant's motion to transfer venue.

The Fifth Circuit's interpretation of 42 U.S.C. § 2000e-5(f)(3) is entirely contradictory to this established opinion:

> When the filing of a claim is covered by a special venue statute, as in this case, we think the venue factors set forth in that special statute are the clearest indicators of where Congress considered the best place to try an employment discrimination case. In this case those special venue factors clearly indicate that Congress thought employment discrimination controversies should be litigated in judicial districts that had direct and immediate connection with the parties, the events and the evidence bearing on their controversy. For these reasons we cannot accept the Middle District Court's interpretation of the statutory language which would support venue in the Middle District of Louisiana.[5] 305 F.3d 354, 359.

---

5. The Fifth Circuit Court of Appeals deleted this section in their opinion rendered after rehearing and substituted the following: The only basis upon which the Middle District Court could be a permitted venue under the Statute is the language which states: "such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed." Assuming, without deciding, that the Middle District Court was an appropriate venue for Plaintiff's suit, we nevertheless conclude that the Middle District Court clearly erred and abused its discretion in denying Horseshoe's motion to transfer. Clearly the Middle District Court found that the criteria of "convenience of the parties and witnesses" as specified in Section 1404(a) "militated" in favor of granting the transfer in this case. Likewise the Middle District court found that the statutory venue factor of "district in which the unlawful employment is alleged to have occurred" militated in favor of transfer to the Western District. Only by considering factors which

(Cont'd)

There is much debate between the Circuit Courts as to what Congress meant when drafting the special venue statute. Certiorari is necessary for this Court to interpret 42 U.S.C. § 2000e-5(f)(3) to maintain uniformity of decisions within the Circuit Courts, to establish a final interpretation of the special venue statute and the rights afforded to a plaintiff regarding the plaintiff's choice of forum versus a defendants assertion of a more convenient forum.

(Cont'd)

are not mentioned in the special venue statue (i.e. "possibility of delay or prejudice" and "the location of counsel") and by disregarding other factors that are expressly stated in the special venue statute (i.e. Location of books and records; place where plaintiff would have worked but for the unlawful practice; and place where respondent has its principal place of business) was the Middle District Court able to create an evenly divided set of factors. If the two factors not mentioned in the venue statute are left out of the analysis and the three factors expressly mentioned in the venue statute but not considered by the Middle District Court are added into the analysis, the factors favoring transfer substantially out weight the single factor of the place where plaintiff chose to file suit. (Pet.App. 12a-13a).

CONCLUSION

The Court's majority decision to grant defendant's Motion to Transfer disregards the plain language of the special venue statute. The lower court's decision to grant the Motion to Transfer Venue to the Western District and the court's refusal to accept *Richardson*, *supra* as precedent creates a conflict between courts. Accordingly, the petition for a writ of certiorari should be granted.

Respectfully submitted,

JILL CRAFT
Counsel of Record
CRAFT & CRAFT
509 St. Louis Street
Baton Rouge, LA 70802-6158
(225) 343-7753

GEORGE G. CABALLERO
WILLIAM W. THIES
CABALLERO LAW FIRM
8658 Quarters Lake Road
Baton Rouge, LA 70809
(225) 292-4407

KYLE KERSHAW
KERSHAW & SULZER
212 Laurel Street
Baton Rouge, LA 70801
(225) 336-9600

Attorneys for Petitioner

APPENDIX A — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT AND GRANT OF PANEL REHEARING DATED AND FILED JULY 1, 2003

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 02-30682

In Re: HORSESHOE ENTERTAINMENT,

Petitioner.

Petition for Writ of Mandamus to the United States District Court for the Middle District of Louisiana

Before BARKSDALE, DeMOSS, and BENAVIDES, Circuit Judges.

DeMOSS, Circuit Judge:

Horseshoe Entertainment ("Horseshoe"), a Louisiana partnership having its domicile and principal place of business in Bossier City, Louisiana, petitions this Court to issue a Writ of Mandamus to reverse a decision of the United States District Court for the Middle District of Louisiana (the Middle District Court) in Civil Action No. 01-295 on its docket, denying a motion by Horseshoe to transfer the venue of a Title VII sex discrimination/ADA case to the Shreveport Division of the United States District Court for the Western District of Louisiana (the Shreveport Division Court) for the convenience of the parties and witnesses and in the interest of justice pursuant to 28 U.S.C. § 1404(a).

Appendix A

Caroline W. Rogers ("plaintiff") filed such suit against Horseshoe on April 17, 2001, in the Middle District Court alleging that she was subjected to discrimination and harassment while employed with Horseshoe in violation of Title VII of the Civil Rights Act of 1964 ("Title VII") and the Americans with Disabilities Act ("ADA"). On June 13, 2001, prior to filing any answer, Horseshoe filed its motion to transfer pursuant to § 1404(a) and such motion was timely and of sufficient content to prevent waiver of the venue issue when Horseshoe subsequently filed its answer in such proceeding. In its motion to transfer, Horseshoe asserts the following uncontested facts and grounds for its motion:

A. As reflected by plaintiff's sworn complaint:

1. Plaintiff is a resident of Caddo Parish, Louisiana, which is within the Shreveport Division of the Western District of Louisiana;

2. Plaintiff was employed by Horseshoe in Bossier City, Louisiana, which is also within the Shreveport Division of the Western District of Louisiana;

3. Plaintiff was subjected to certain acts of sexual harassment by other employees of Horseshoe and all of these acts occurred in Bossier City which is also within the Shreveport Division of the Western District of Louisiana;

4. Plaintiff suffers from a disability (diabetes) and Horseshoe failed to make reasonable accommodations for her disability and harassed her because of such disability; and all such conduct occurred in Bossier City or the greater

Shreveport area within the Shreveport Division of the Western District of Louisiana;

5. The alleged conduct of harassment and discrimination caused plaintiff to be constructively discharged from her employment on July 17, 2000, which occurred in Bossier City, Louisiana, within the Shreveport Division of the Western District of Louisiana; and

6. As a result of such alleged conduct, plaintiff sustained severe emotional distress and damages in the greater Shreveport area which is within the Shreveport Division of the Western District of Louisiana.

B. Almost all of the potential witnesses for Horseshoe reside in the areas of Bossier City and Shreveport, Louisiana, all within the Shreveport Division of the Western District Court.

C. Almost all of plaintiff's potential witnesses reside within the Bossier City or Shreveport area within the Shreveport Division of the Western District Court.

D. All employment records related to plaintiff's employment by Horseshoe are maintained in the offices of Horseshoe in Bossier City, Louisiana, within the Shreveport Division of the Western District.

E. But for the alleged conduct herein and the alleged constructive discharge, the plaintiff would have continued to work for Horseshoe in Bossier City, Louisiana, within the Shreveport Division of the Western District.

F. The distance between Baton Rouge, Louisiana, where the Middle District Court would conduct this litigation if it is not transferred, and the Shreveport/Bossier City area, where the witnesses and parties reside, is more than 200 miles; and is therefore beyond the 100 mile distance in which the automatic subpoena power of a district court can be used to compel attendance of witnesses.

JURISDICTIONAL QUESTION

As an initial point in her response filed with this Court to Horseshoe's petition for mandamus, the plaintiff questions whether this Court has jurisdiction under the All Writs Act (28 U.S.C. § 1651) to review the Middle District Court's decisions on the motion to transfer and contends that since Horseshoe did not even seek a certification from the Middle District Court pursuant to 28 U.S.C. § 1292, the order on the motion to transfer venue may not be reviewable at all. In essence, the plaintiff's contention is that the decision of the Middle District Court on the motion to transfer venue is not reviewable in any way by this Court. We disagree for two reasons. First of all, we operate on the presumption that if Congress wants to make a decision by a district court or a circuit court unreviewable it certainly knows how to do that. *See* 28 U.S.C. § 1447(d) which states that an order remanding a case to a state court from which it was removed "is not reviewable on appeal or otherwise; and see 28 U.S.C. 2244(b)(3)(E)." There is no such similar provision in the general venue statutes nor in the special venue statute applicable in this case.

Secondly, we think plaintiff misreads our Circuit's precedents. In ***Garner v. Wolfinbarger***, 433 F.2d 117, 120 (5th Cir. 1970), after first holding "that § 1292(b) review is inappropriate for challenges to a judge's discretion in granting or denying transfer under § 1404(a)," the panel went on to state:

> This Circuit has recognized the availability of mandamus as a limited means to test the district court's discretion in issuing transfer orders. ***Ex Parte Blaski***, 245 F.2d 737 (5th Cir.), *cert. denied*, 355 U.S. 872, 78 S. Ct. 122, 2 L. Ed. 2d 76 (1957); ***Ex Parte Pfizer & Co.***, 225 F.2d 720 (5th Cir. 1955); ***Atlantic Coastline RR v. Davis***, 185 F.2d 766 (5th Cir. 1950); *cf.* ***Ex Parte Deep Water Exploration Co.***, *supra.*

The petition for writ of mandamus in ***Garner*** was denied because there was no showing of "any failure by the district judge to correctly construe and apply the statute or to consider the relevant factors incident to ruling upon a motion to transfer or clear abuse of discretion on his part" which were the standards of review set in ***Pfizer***, *supra.* While the court in ***Garner*** commented that "in the voluminous litigation over transfer orders, only a few litigants have surmounted the formidable obstacles and secured the writ," we take that as a simple expression of the adage that "exceptions prove the rule." Neither ***Garner*** nor ***Pfizer*** have been overruled or criticized by this Court; and from these cases we draw the following standards (the ***Pfizer*** Standards) to be applied by

our Court in deciding the propriety or not of a district court's ruling on a motion to transfer under § 1404(a):

a.) Did the district court correctly construe and apply the relevant statutes;

b.) Did the district court consider the relevant factors incident to ruling upon a motion to transfer; and

c.) Did the district court abuse its discretion in deciding the motion to transfer.

There is no way that this Court can determine whether the ***Pfizer*** standards have been met except by reviewing carefully the circumstances presented to and the decision making process used by the Middle District Court; and for the reasons hereinafter set forth the errors of the Middle District Court are sufficient to satisfy the ***Pfizer*** standards and to justify the issuance of the writ of mandamus.

VENUE QUESTIONS

In addition to the general statutory provisions regarding venue set forth in Chapter 87 of Title 28 of the U.S. Code (28 U.S.C. § 1391, et seq.), Congress has adopted special venue provisions for the type of litigation involved in this case (claims under Title VII and the ADA) which state as follows:

(3) Each United States district court and each United States court of a place subject to the

> jurisdiction of the United States shall have jurisdiction of actions brought under this subchapter. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of Title 28, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

42 U.S.C. § 2000e-5(f)(3). We note that the last sentence of this special venue provision makes express cross-reference to §§ 1404 and 1406 of Title 28 indicating clearly Congress' intention that the provisions of §§ 1404 and 1406 would also be applicable in this case.

The provisions of 28 U.S.C. § 1404(a), upon which Horseshoe relies in its motion for transfer, state as follows:

> (a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.

Appendix A

The first issue that a district court must address in ruling on a motion to transfer under § 1404(a) is the question of whether the judicial district to which transfer is sought qualifies under the applicable venue statutes as a judicial district where the civil action "might have been brought." While the Middle District Court did not expressly address this issue, in our view there is no genuine controversy on this point. Plaintiff's suit might have been originally filed in the Shreveport Division of the Western District because (1) that is where "the unlawful employment practices are alleged to have been committed," (2) that is where "the employment records relevant to such practice are maintained and administered," (3) that is where "the aggrieved person would have worked but for the alleged unlawful employment practice," and (4) that is where "the respondent has his principal office." The critical issue in this case, therefore, becomes whether the "convenience of parties and witnesses, in the interest of justice" requires a district court to transfer this civil action to the Shreveport Division of the Western District.

For reasons not readily discernable from the record or the parties' briefing, the Middle District Court waited some 13 months until July 2002, to rule on Horseshoe's motion to transfer. As indicated earlier, Horseshoe filed its motion to transfer timely and before it filed its answer and in our view disposition of that motion should have taken a top priority in the handling of this case by the Middle District Court. When it finally did rule the Middle District Court summarized its findings and conclusions in the following paragraph:

> In considering the relevant factors, the Court finds that, since the plaintiff, the defendant and

> presumably the witnesses, all reside in Caddo Parish, the factors of availability and convenience of witnesses, availability and convenience of the parties, and place of alleged wrong militate in favor of the requested transfer. On the other hand, the factors of possibility of delay or prejudice if transfer is granted, the location of counsel,[8] and plaintiff's choice of forum seem to dictate that the requested transfer be denied.[9] Since the relevant factors appear to be evenly divided between the two alternatives, the Court finds that defendant has failed to carry its burden of establishing that justice weighs substantially in favor of the requested transfer of venue. Therefore, transfer of this litigation is not warranted and plaintiff's choice of forum will be honored.

In footnote 8, the Middle District Court pointed out that "Both parties are now represented by Baton Rouge counsel." In footnote 9, the Middle District Court indicated that it "Does not consider the factor regarding the location of books and records to be significant in the case because the implements of modern electronic imaging and document transfer and retrieval will greatly reduce, if not eliminate any inconvenience to the parties in this regard."

We think the District Court erred in concluding that the "relevant factors appear to be evenly divided between the two alternatives" and that in such circumstance

"the plaintiff's choice of forum will be honored," for the following reasons:

1. The factor of "location of counsel" is irrelevant and improper for consideration in determining the question of transfer of venue. Neither the plaintiff nor the Middle District Court favored us with a citation to any Supreme Court or Circuit Court decision recognizing the appropriateness of this factor nor have they cited any statutory text or any legislative history indicating the intention of Congress that such a factor be considered in deciding a motion to transfer. Furthermore, at the time Horseshoe filed its motion to transfer, it was represented by counsel in Shreveport and the premise of the Middle District Court's reliance on this factor was not correct. The delay by the Middle District Court in ruling on the motion to transfer required Horseshoe to engage counsel in Baton Rouge to represent it in the ongoing matters before the Middle District Court. Such "boot strapping" of even a relevant factor, much less an irrelevant factor, should not be encouraged; and we hold that the Middle District Court erred in considering this factor and giving it equivalent weight in its decision-making process.

2. We think the Middle District Court erred in not giving significance to "the factor regarding the location of books and records." Where relevant employment records are maintained and administered is expressly stated as a venue factor in the special venue statute and should be weighed by a District Court in evaluating the "interest of justice" aspect of the motion to transfer.

3. We think the Middle District Court erred in considering and giving weight to the factor of "possibility of delay or prejudice if transfer is granted." There is absolutely nothing in the pleadings, briefs, or records of this case from which we can determine what specifically the Middle District Court had in mind in using the vague generalities of "possibility of delay or prejudice" if transfer is granted. We recognize that in rare and special circumstances a factor of "delay" or of "prejudice" might be relevant in deciding the propriety of transfer, but only if such circumstances are established by clear and convincing evidence. No such evidence exists here in this case and we think the Middle District Court erred by considering and giving weight to the mere "possibility" of vague and indefinite circumstances.

4. Finally, we believe the Middle District Court erred in attributing decisive weight to the plaintiff's choice of forum. We believe that it is clear under Fifth Circuit precedent that the plaintiff's choice of forum is clearly a factor to be considered but in and of itself it is neither conclusive nor determinative. ***Garner v. Wolfinbarger***, *supra* at 119. Obviously, to be considered at all, the plaintiff's choice of forum must be one which is permitted under the relevant venue statute. The plaintiff did not allege that "any unlawful employment practice" was committed in the Middle District of Louisiana; there is nothing in this record to indicate that relevant employment records were maintained or administered in the Middle District of Louisiana; there is nothing in this record to indicate that the plaintiff "would have worked" for Horseshoe in the Middle District of Louisiana but for the alleged unlawful employment practice

and there is nothing in this record to indicate that Horseshoe had any office of any kind in the Middle District of Louisiana.

The only basis upon which the Middle District Court could be a permitted venue under the Statute is the language which states:

> "such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed."

Assuming, without deciding, that the Middle District Court was an appropriate venue for Plaintiff's suit, we nevertheless conclude that the Middle District Court clearly erred and abused its discretion in denying Horseshoe's motion to transfer. Clearly the Middle District Court found that the criteria of "convenience of the parties and witnesses" as specified in § 1404(a) "militated" in favor of granting the transfer in this case. Likewise the Middle District Court found that the statutory venue factor of "district in which the unlawful employment practice is alleged to have occurred" militated in favor of transfer to the Western District. Only by considering factors which are not mentioned in the special venue statute (i.e. "possibility of delay or prejudice" and "the location of counsel") and by disregarding other factors that are expressly stated in the special venue statute (i.e. location of books and records; place where plaintiff would have worked but for the unlawful practice; and place where respondent has its principal place of business) was the Middle District Court able to create an evenly divided set of factors. If the two factors not mentioned in the venue statute are left

out of the analysis and the three factors expressly mentioned in the venue statute but not considered by the Middle District Court are added into the analysis, the factors favoring transfer substantially out weigh the single factor of the place where plaintiff chose to file the suit.

Accordingly, we grant Horseshoe's petition for a writ of mandamus, vacate the order of the Middle District Court denying Horseshoe's motion for transfer, and remand this case to the Middle District Court with instructions to enter an order transferring this case to the docket of the Shreveport Division of the Western District forthwith.

Appendix A

BENAVIDES, Circuit Judge, dissenting:

I would deny the writ. All necessary facts and factors were considered by the district court and the transfer statute was properly construed. Under these circumstances we should not even attempt to weigh and balance the factors which the district court was required to consider in reaching its decision. *Ex parte Chas. Pfizer & Co.*, 225 F.2d 720 (5th Cir. 1955). While purporting to review the district court's decision for a clear abuse of discretion, the majority in fact conducts a *de novo* review. I fear that the decision will lead to the filing of unnecessary and unwholesome pretrial mandamus petitions by parties aggrieved by rulings on motions to transfer brought under 28 U.S.C.A. § 1404(a). Mandamus is an extraordinary writ and should not be a substitute for appeal. We have decided that the writ should issue "only in the absence of other adequate remedies when the trial court has exceeded its jurisdiction or has declined to exercise it, or when the trial court has so clearly and indisputably abused its discretion as to compel prompt intervention by the appellate court." *In re Chesson*, 897 F.2d 156, 159 (5th Cir. 1990) (denying writ of mandamus) (citing *In re First South Savings Association*, 820 F.2d 700 (5th Cir. 1987); *United States v. Crawford Enterprises*, 754 F.2d 1272 (5th Cir. 1985)). This is not such a case.

For these reasons and for the reasons stated in my dissent to the panel's original opinion,[1] I would deny the writ.

---

1. *In re Horseshoe Entertainment,* 305 F.3d 354, 360-62 (5th Cir. 2002) (Benavides, J., dissenting).

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-30682

In Re: HORSESHOE ENTERTAINMENT,

Petitioner.

Petition for Writ of Mandamus to the
United States District Court for the
Middle District of Louisiana, Baton Rouge

ON PETITION FOR REHEARING EN BANC

(Opinion 9/10/02, 5 Cir., 305 F.3d 354)

Before BARKSDALE, DeMOSS, and BENAVIDES, Circuit Judges.

PER CURIAM:

Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is GRANTED; and the panel opinion filed under date of September 10, 2002, and published at 305 F.3d 354, *et seq.* is hereby withdrawn and the new opinion filed contemporaneously with this Order is substituted for such prior opinion. The mandate on this substituted opinion shall issue forthwith. No member of the panel, nor judge in regular

active service of the Court having requested that the Court be polled on rehearing *en banc* (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

s/ Harold R. Demoss, Jr.
HAROLD R. DEMOSS, JR.
UNITED STATES CIRCUIT JUDGE

APPENDIX B — DISSENTING OPINION OF CIRCUIT JUDGE BENAVIDES DATED AND FILED SEPTEMBER 10, 2002

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 02-30682

In Re: HORSESHOE ENTERTAINMENT,

Petitioner.

Petition for Writ of Mandamus to the
United States District Court for the
Middle District of Louisiana

* * *

BENAVIDES, Circuit Judge, dissenting:

The standard for reviewing a district court's decision not to transfer venue is clear and well-settled: "[w]e review all questions concerning venue under the abuse of discretion standard." *United States v. Delgado-Nunez*, 295 F.3d 494, 496 (5th Cir. 2002) (quoting *United States v. Asibor*, 109 F.3d 1023, 1037 (5th Cir. 1997)). Of course, "abuse of discretion review of purely legal questions . . . is effectively de novo, because '[a] district court by definition abuses its discretion when it makes an error of law.'" *Delgado-Nunez*, 295 F.3d at 496 (quoting *Koon v. United States*, 518 U.S. 81, 100 (1996)). At issue here, however, is not a purely legal question, such as those contemplated in *Delgado-Nunez* and *Koon*. Rather, in deciding not to transfer the matter, the

district court considered and balanced many facts and factors. Accordingly, the district court's decision should not be reviewed *de novo*, but rather should stand barring an abuse of discretion.[1]

Furthermore, the writ of mandamus is an extraordinary, seldom-used remedy—not a substitute for appeal. Indeed, the writ should issue only "in the absence of other adequate remedies when the trial court has exceeded its jurisdiction or has declined to exercise it, or when the trial court has so clearly and indisputably abused its discretion as to compel prompt intervention by the appellate court." *In re Chesson*, 897 F.2d 156, 159 (5th Cir. 1990) (citing *In re First South Savings Association*, 820 F.2d 700 (5th Cir. 1987); *United States v. Crawford Enterprises*, 754 F.2d 1272 (5th Cir. 1985)). Factors used to determine whether to issue the writ of mandamus "include whether the district court failed to construe and apply the statute correctly, whether the relevant factors incident to a motion to transfer were considered, and whether there was a clear abuse of discretion." *In re Cragar Industries, Inc.*, 706 F.2d 503, 504 (5th Cir. 1983) (citing *In re McDonnell-Douglas Corp.*, 647 F.2d 515, 517 (5th Cir. 1981)). Although it was concluded in *Cragar* that the district court had in fact abused its discretion, no writ of mandamus was issued and the district court was instead encouraged to reconsider its decision. *See Cragar*, 706 F.2d at 506. Thus,

1. It is not clear whether the majority opinion adopts this abuse of discretion standard or a more scrutinizing review. Although the penultimate paragraph of the majority opinion concludes that the district court "clearly erred and abused its discretion in denying [the] . . . motion to transfer," most of the opinion addresses only whether the district court erred, not whether an error rose to the level of an abuse of discretion.

because a decision to transfer venue is governed by the abuse of discretion standard and the fact that the writ of mandamus is categorically disfavored as a remedy, the district court's decision not to transfer venue and to keep the matter in the Middle District of Louisiana must be respected in all but the most compelling circumstances.

To support its argument that the district court should have transferred the matter to the Western District of Louisiana, the majority opinion questions whether venue is proper in the Middle District. Yet, the plain meaning of the relevant special venue statute, codified at 42 U.S.C. § 2000e-5(f)(3), makes clear that venue is proper in *any* judicial district in any state in which the alleged discrimination occurred, which, here, includes the Middle District. *See* 42 U.S.C. § 2000e-5(f)(3) (noting that venue of Title VII suit lies in "any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice").[2] Thus, given the plain meaning of the special venue statute, venue is proper in any district in Louisiana, the state in which the alleged discrimination occurred. This sound result is neither novel nor unprecedented. *See, e.g., Richardson v. Alabama*

2. It has been established that this special venue statute supersedes any general venue provision. *See, e.g., Harding v. Williams Property Co.*, 1998 WL 637414, *2 n.5 (4th Cir. 1998) (unpublished disposition); *Ross v. Buckeye Cellulose Corp.*, 980 F.2d 648, 655 (11th Cir. 1993); *Johnson v. Payless Drug Stores Northwest, Inc.*, 950 F.2d 586 (9th Cir. 1991).

State Bd. of Educ., 935 F.2d 1240, 1248 n.11 (11th Cir. 1991) ("Since the alleged discrimination took place in Georgia, appellants were free to bring suit in any of the state's three federal judicial districts."); *see also Garus v. Rose Acre Farms, Inc.*, 839 F. Supp. 563 (N.D. Ind. 1993); *Gilbert v. General Elec. Co.*, 347 F. Supp. 1058 (E.D. Va. 1972). *Cf. Thurman v. Martin Marietta Data Systems*, 596 F. Supp. 367 (M.D. Pa. 1984).

In support of issuing the writ of mandamus, the majority opinion argues that this matter should be litigated in the Western District of Louisiana.[3] To be sure, this matter

---

3. Courts traditionally have employed the following factors to determine whether to transfer venue:

(1) Plaintiff's choice of forum.

(2) The availability of compulsory process for the attendance of unwilling witnesses.

(3) The cost of obtaining the attendance of willing witnesses.

(4) The accessibility and location of sources of proof.

(5) The location of counsel.

(6) The relative congestion of the courts' dockets.

(7) Accessibility of the premises to jury view.

(8) Relation of the community in which courts and the jurors are required to serve to the occurrence giving rise to the suit.

(Cont'd)

could have been brought properly in the Western District. Supportive of this conclusion are the facts that the Western District is (1) the place of the alleged discriminatory conduct; (2) where the employment records relevant to the alleged discriminatory conduct are located; (3) the place of the plaintiff's residence; and (4) where most of the potential witnesses reside. Other factors, however, point toward keeping the matter in the Middle District. Most significantly, transferring venue would hinder the plaintiff's ability to choose a forum and may also result in prejudice and delay in this litigation,[4] as some motions in this matter have been disposed of and others are currently pending, including defendant's motion for summary judgment.[5]

(Cont'd)

> (9) The time, cost, and ease with which the trial can be conducted, and all other practical considerations relative to the trial.

See Fletcher v. Southern Pacific Transp. Co., 648 F. Supp. 1400, 1401 (E.D. Tex. 1986) (voluminous internal citations omitted).

4. Also perhaps relevant is the fact that the attorneys in this matter are located in the Middle District—not the Western District—of Louisiana. Although attorney location is never a strong factor in the calculus to transfer venue, it can bear some weight on the venue decision. *See Formaldehyde Institute, Inc. v. U.S. Consumer Product Safety Com'n*, 681 F.2d 255, 262 (5th Cir. 1982) (holding that attorney location was not "a significant basis for determining venue").

5. It seems strange that although defendant has filed in the Middle District a motion for summary judgment, which presumably relies upon various witness affidavits, defendant, in support of its request to transfer venue, hints that those same witnesses would be unavailable for trial unless the matter is transferred to the Western District. These positions appear to be mutually exclusive.

Appendix B

Believing that the district court's analysis and determination not to transfer venue clearly does not rise to the level of abuse of discretion, I would deny the extraordinary remedy of mandamus.

Accordingly, I dissent.

APPENDIX C — RULING ON MOTION TO TRANSFER OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF LOUISIANA DATED AND FILED JULY 2, 2002

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CIVIL ACTION

NO. 01-295-C

CAROLINE W. ROGERS

VERSUS

HORSESHOE ENTERTAINMENT

RULING ON MOTION TO TRANSFER

This matter is before the court on a Motion to Transfer filed by defendant, Horseshoe Entertainment. Plaintiff has filed opposition. Jurisdiction is allegedly based on federal question, 28 U.S.C. § 1331, under Title VII of the Civil Rights Act of 1964 and the Americans With Disabilities Act, 42 U.S.C. 12101, *et seq.*

BACKGROUND

On April 17, 2001, plaintiff, Carolyn W. Rogers, a resident of Caddo Parish, Louisiana, filed a complaint alleging that while employed by Horseshoe Entertainment at the establishment which it operated in Bossier City, Louisiana (also in Caddo Parish), plaintiff was sexually

harassed and also harassed with regard to her diabetes disability. Based on these factual allegations, plaintiff sets forth claims for violations under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, as amended by the Civil Rights Act of 1991; and the American Disabilities Act, 42 U.S.C. § 12101, *et seq.* Plaintiff alleges that defendants' actions created a hostile work environment and resulted in her subsequent resignation. Plaintiff seeks compensatory and punitive damages.

Defendant's Motion to Transfer contends that since plaintiff and defendant both reside in Caddo Parish, Louisiana and, since Caddo Parish, Louisiana is located in the Shreveport Division of the Western District of Louisiana, this action should be transferred to the Western District of Louisiana because it is allegedly a more convenient forum.

DISCUSSION

Defendant acknowledges that in plaintiff's complaint, she alleged venue pursuant to the more specific venue provision under Title VII and that plaintiff's choice of the Middle District of Louisiana appears to be a proper venue.[1] However, defendant argues that plaintiff's choice of the Middle District of Louisiana is not the final dispositive factor in the court's consideration as

---

1. Pursuant to Title VII, 42 U.S.C. § 2000e-5(f)(3), provides, in pertinent part:

> Each United States District Court and each United States Court of a place subject to jurisdiction of the United States shall have jurisdiction of actions brought under this subchapter. Such an action may be brought in any judicial district in the state in which the unlawful employment practice is alleged to have been committed. . . .

to whether or not it is appropriate to transfer this matter to another district. Hence, defendant moves for a venue transfer, pursuant to 28 U.S.C. § 1404(a).

Section 1404(a) of Title 28 of the United States Code provides, as follows:

> (a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.

The trial court has discretion in determining whether to transfer a case pursuant to § 1404(a).[2] It is well settled that the movant bears the burden of showing why a transfer of venue under §1404(a) is warranted.[3] To prevail, the movant must show that justice weighs substantially in favor of transfer and the balance of convenience.[4] Therefore, in evaluating the merits of a § 1404(a) motion, the court must determine if a transfer would make it substantially easier for the parties to litigate the case.[5]

As directed by the Fifth Circuit, trial courts are to consider "all relevant factors to determine whether or not on balance the litigation would more conveniently proceed and

---

2. *See* **Jarvis Christian College v. Exxon Corp.**, 845 F.2d 523, 528 (5th Cir. 1988).

3. *See* **Gundle Lining Const. Corp. v. Fireman's Fund Ins. Co.**, 844 F.Supp. 1163, 1165 (S.D. Tex. 1994).

4. *See* **Id.**

5. *See* **Id.**

the interest of justice be better served by transfer to a different forum."[6] These factors are as follows: 1) the availability and convenience of witnesses; 2) the availability and convenience of the parties; 3) the place of the alleged wrong; 4) the location of books and records; 5) the possibility of delay or prejudice if transfer is granted; 6) the location of counsel; and 7) the plaintiffs choice of forum.[7]

In considering the relevant factors, the Court finds that, since the plaintiff, the defendant; and, presumably the witnesses, all reside in Caddo Parish, the factors of availability and convenience of witnesses, availability and convenience of the parties, and place of alleged wrong militate in favor of the requested transfer. On the other hand, the factors of possibility of delay or prejudice if transfer is granted, the location of counsel[8], and plaintiff's choice of forum seem to dictate that the requested transfer be denied.[9]

---

6. **Peteet v. Dow Chem. Co.**, 868 F.2d 1428, 1436 (5th Cir.), *cert. denied*, 493 U.S. 935, 110 S.Ct. 328, 107 L.Ed.2d 318 (1989) (citation omitted).

7. *See* e.g. **EEOC v. Mustang Mobile Homes, Inc.**, 88 F.Supp.2d 722, 725 (W.D. Tex. 1999); **Hall v. Environmental Chem. Co.**, 64 F.Supp.2d 638, 644 (S.D. Tex. 1999).

8. Subsequent to the filing of the Motion to Transfer, defendants replaced their original attorney with local (Baton Rouge) counsel. Therefore both parties are now represented by Baton Rouge counsel.

9. The Court does not consider the factor regarding the location of books and records to be significant in this case because the implements of modem electronic imaging and document transfer and retrieval will greatly reduce, if not eliminate, any inconvenience to the parties in this regard.

Since the relevant factors appear to be evenly divided between the two alternatives, the Court finds that defendant has failed to carry its burden of establishing that justice weighs substantially in favor of the requested transfer of venue. Therefore, transfer of this litigation is not warranted and plaintiff's choice of forum will be honored.

Accordingly,

IT IS ORDERED that defendant's, Horseshoe Entertainment, Motion to Transfer (Doc. No. 5) is **DENIED**.

Baton Rouge, Louisiana, this 2nd day of July, 2002.

s/ Ralph E. Tyson
RALPH E. TYSON, JUDGE
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

Supreme Court, U.S.
FILED
OCT 3 1 2003
OFFICE OF THE CLERK

No. 03-0496

In The

Supreme Court of the United States

CAROLINE ROGERS,

Petitioner,

v.

HORSESHOE ENTERTAINMENT,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

MURPHY J. FOSTER, III
Counsel of Record
BREAZEALE, SACHSE & WILSON, L.L.P.
23rd Floor, One American Place
Post Office Box 3197
Baton Rouge, LA 70821
(225) 387-4000

ROBERT E. PIPER, JR.
PIPER & ASSOCIATES
624 Pierre Avenue
Shreveport, LA 71103
(318) 226-0826

Attorneys for Respondent

COCKLE LAW BRIEF PRINTING CO (800) 225-6964
OR CALL COLLECT (402) 342-2831

PARTIES TO THE PROCEEDING AND STATEMENT PURSUANT TO RULE 29.6

Respondent, Horseshoe Entertainment, is a Louisiana Limited Partnership. New Gaming Capital Partnership and Horseshoe Gaming Holding Corporation own partnership interests in Horseshoe Entertainment.

Jack B. Binion owns 10% or more of the stock of Horseshoe Gaming Holding Corporation.

TABLE OF CONTENTS

Page

Parties to the Proceeding and Statement Pursuant to Rule 29.6 i

Table of Contents ii

Table of Authorities iii

Reasons For Denying the Writ 1

I. The Fifth Circuit Did Not Render an Opinion Regarding the Interpretation of the Venue Provision For Title VII and ADA Claims, 42 U.S.C. § 2000e-5(f)(3) 2

II. The Fifth Circuit Properly Reviewed the Ruling on the Motion To Transfer Venue Pursuant to 28 U.S.C. § 1404(a) 5

Conclusion 8

TABLE OF AUTHORITIES

Page

CASES:

Apache Products Co. v. Employer Ins. of Wassau, 154 F.R.D. 650 (S.D. Miss. 1994) 7

Bryant v. ITT Corp., 48 F. Supp. 2d 829 (N.D. Ill. 1999) 7

Chrysler Capital Corp. v. Woehling, 663 F. Supp. 478 (D. Del. 1987) 7

Dupre v. Spanier Marine Corp., 810 F. Supp. 823 (S.D. Tex. 1993) 7

Garner v. Wolfinbarger, 433 F.2d 117 (5th Cir. 1970) 7

Gundle Lining Const. Corp. v. Fireman's Fund Ins. Co., 844 F. Supp. 1163 (S.D. Tex. 1994) 7

Hartford Fire Ins. Co. v. Westinghouse Elec. Corp., 725 F. Supp. 317 (S.D. Miss. 1989) 7

Hernandez v. Graebel Van Lines, 761 F. Supp. 983 (E.D. N.Y. 1991) 7

Icon Indus. Controls Corp. v. Cimetrix, Inc., 921 F. Supp. 375 (W.D. La. 1996) 7

Los Angeles Memorial Coliseum Comm'n v. NFL, 89 F.R.D. 497 (C.D. Cal. 1981) 8

Morgan v. Illinois Cent. R. Co., 161 F. Supp. 119 (S.D. Tex. 1958) 7

New Image, Inc. v. Travelers Indem. Co., 536 F. Supp. 58 (E.D. Pa. 1981) 7

Paul v. International Precious Metals Corp., 613 F. Supp. 174 (S.D. Miss. 1985) 7

TABLE OF AUTHORITIES – Continued

Page

Reiffen v. Microsoft Corp., 104 F. Supp. 2d 48 (D. D.C. 2000) 7

Richardson v. Alabama State Bd. of Educ., 935 F.2d 1240 (11th Cir. 1991) 4, 5

STATUTES:

28 U.S.C. § 1404(a) 1, 2, 4, 5, 7

42 U.S.C. § 2000e-5(f)(3) 1, 2, 3

Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.* 1

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* 1

REASONS FOR DENYING THE WRIT

The issue presented for review in the Petition for Writ of Certiorari is whether 42 U.S.C. § 2000e-5(f)(3), the venue provision applicable to claims brought under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* (hereinafter "Title VII"), and the Americans with Disabilities Act 42 U.S.C. § 12101, *et seq.* (hereinafter "ADA"), permits a plaintiff to bring suit in *any* judicial district in the state of Louisiana without being subject to a motion to transfer pursuant to 28 U.S.C. § 1404(a). The Petition for Writ of Certiorari should be denied inasmuch as the issue is not ripe for consideration by this Honorable Court and the opinion rendered by the Fifth Circuit Court of Appeals does not conflict with decisions of other Circuit Courts of Appeals.

Petitioner filed suit in the United States District Court, Middle District Court of Louisiana. Respondent, Horseshoe Entertainment (hereinafter "Horseshoe"), filed a motion to transfer the litigation to the Shreveport Division of the Western District of Louisiana. After the motion was denied, Horseshoe filed a Writ of Mandamus, seeking review of the District Court's decision. The Fifth Circuit granted Horseshoe's Writ of Mandamus, and vacated the Middle District Court's denial of the Motion to Transfer Venue.

The Fifth Circuit's opinion expressly states that it simply assumed, "without deciding," that the Middle District Court of Louisiana was an appropriate venue. Nevertheless, pursuant to 28 U.S.C. § 1404(a), transfer of venue to the Shreveport Division of the Western District was appropriate. Since the Fifth Circuit made no decision regarding the interpretation of the language used in 42

U.S.C. § 2000e-5(f)(3), this issue is not ripe for consideration by this Court. Furthermore, Petitioner cites no authority to suggest that Plaintiff's choice of venue pursuant to 42 U.S.C. § 2000e-5(f)(3) is not subject to a motion to transfer venue pursuant to 28 U.S.C. § 1404(a). To the contrary, the venue provision at issue specifically references the applicability of 28 U.S.C. § 1404(a). The Fifth Circuit's ruling was proper. While it rendered no opinion regarding the interpretation of the language of the venue statute, the Court ruled that a transfer of venue was warranted pursuant to 28 U.S.C. § 1404(a). Therefore, Respondent respectfully urges that this Court deny the Petition for Writ of Certiorari.

I. THE FIFTH CIRCUIT DID NOT RENDER AN OPINION REGARDING THE INTERPRETATION OF THE VENUE PROVISION FOR TITLE VII AND ADA CLAIMS, 42 U.S.C. § 2000e-5(f)(3)

Petitioner erroneously asserts that the Fifth Circuit's opinion "establishes a new interpretation of the special venue statute of 42 U.S.C. § 2000e-5(f)(3) thereby fundamentally changing existing law affording Title VII plaintiffs the right to select the forum within the state." It did not. Rather, the Fifth Circuit specifically stated that it would not render an opinion as to the proper interpretation of the venue provision. Accordingly, this issue is not ripe for consideration by this Court.

Actions brought pursuant to Title VII and the ADA are governed by the following venue provision:

> [A]n action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed,

> in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of Title 28, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

42 U.S.C. § 2000e-5(f)(3). Petitioner alleges that since the alleged discrimination took place in the state of Louisiana, she is entitled to bring the action in any district within the state, relying on the language in the venue provision that "an action may be brought in any judicial district ***in the State*** . . . " Petitioner's broad interpretation of this phrase to include any district court in Louisiana as a proper forum is the only basis for asserting that venue is proper in the Middle District of Louisiana.

The Fifth Circuit, in ruling on the Petition for Writ of Mandamus, specifically stated that it would not decide whether the Middle District Court was an appropriate venue, thereby refusing to render an opinion as to the proper interpretation of the venue statute. The Court stated:

> The only basis upon which the Middle District Court could be a permitted venue under the Statute is the language which states:
>
> > "such an action may be brought in any judicial district in the State in which

> the unlawful employment practice is alleged to have been committed."
>
> Assuming, ***without deciding***, that the Middle District Court was an appropriate venue for Plaintiff's suit, we nevertheless conclude that the Middle District Court clearly erred and abused its discretion in denying Horseshoe's motion to transfer. (Emphasis added).

(Pet., App. A at 12a).[1]

Petitioner misrepresents the Court's opinion by stating that it conflicts with one Circuit Court decision, *Richardson v. Alabama State Bd. of Educ.*, 935 F.2d 1240, 1248 (11th Cir. 1991), which held that venue is proper anywhere in the state in which the alleged conduct was committed. This is incorrect! The Fifth Circuit did not decide this issue, but instead looked to the District Court's evaluation of the motion to transfer pursuant to 28 U.S.C. § 1404(a). Likewise, because the Court rendered no opinion on the issue, this matter is not properly before this Honorable Court for review.

[1] The only language that Petitioner attempts to cite in order to demonstrate a decision by the Fifth Circuit on this issue was withdrawn by the Court. Petitioner cites a portion of the Fifth Circuit opinion that was withdrawn after consideration of the Petition for Rehearing, and this portion is not included in the opinion that was substituted. Since this language was withdrawn by the Fifth Circuit, it is not properly before this Court for review. (*See* Pet. at 16; Pet., App. A at 15a-16a).

II. THE FIFTH CIRCUIT PROPERLY REVIEWED THE RULING ON THE MOTION TO TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1404(a)

In the Petition for a Writ of Certiorari, Petitioner argues (without supporting citations and for the first time during this litigation) that Title VII's venue provision should not be subject to a Motion to Transfer Venue pursuant to 28 U.S.C. § 1404(a), or that greater deference should be given to Plaintiff's choice of forum. Such an argument is contrary to the language of the statute. The venue provision for Title VII and ADA particularly references the applicability of 28 U.S.C. § 1404. The Fifth Circuit noted the reference to the provision governing transfer of venue for convenience of the parties and witness, stating "[w]e note that the last sentence of this special venue provision makes express cross-reference to §§ 1404 and 1406 of Title 28 indicating clearly Congress' intention that the provisions of §§ 1404 and 1406 would also be applicable in this case." (Pet., App. A at 7a). Indeed, even in *Richardson*, *supra*, the principal case cited by Petitioner favoring her interpretation of the venue statute, the Eleventh Circuit recognized that the district court "may transfer the case to another district where the suit could have been heard under section 1404(a)." *Id.* at 1248.

The Fifth Circuit properly reviewed and vacated the District Court's ruling. This action could have been brought in the Shreveport Division of the Western District of Louisiana. As recognized by the Fifth Circuit, the following facts are undisputed: (1) Plaintiff resides in Caddo Parish, Louisiana, which is within the Shreveport Division of the Western District; (2) Plaintiff was employed by Horseshoe in Bossier City, Louisiana, within the Shreveport Division of the Western District; (3) Plaintiff

was allegedly subjected to harassment and discrimination in Bossier City, Louisiana; (4) almost all witnesses for Plaintiff and Defendant reside in areas within the Shreveport Division of the Western District; (5) all employment records related to Plaintiff's employment are maintained within the Shreveport Division of the Western District; (6) but for the alleged conduct, Plaintiff would have continued to work for Horseshoe, which is within the Shreveport Division of the Western District; (7) the distance between Baton Rouge, Louisiana, where the Middle District Court is located, and the Shreveport/Bossier City area, is beyond the 100 mile distance in which the automatic subpoena power of a district court can be used to compel attendance of witnesses. (Pet., App. A at 2a-4a).

Despite these undisputed facts, the Middle District Court denied Horseshoe's Motion to Transfer Venue. The Fifth Circuit held that the Court erred in doing so for the following reasons: (1) the factor of location of counsel is irrelevant and improper for consideration, noting that the delay in ruling on the motion to transfer required Horseshoe to engage counsel in Baton Rouge, Louisiana; (2) the Court did not give significance to the factor of location of books and records; (3) the Court erred in considering and giving weight to the factor of possibility of delay or prejudice without clear and convincing evidence; and (4) the Court erred in attributing decisive weight to Plaintiff's choice of forum. (Pet., App. A at 10a-12a). The Fifth Circuit held that "the factors favoring transfer substantially

outweigh the single factor of the place where plaintiff chose to file the suit."[2] (Pet., App. A at 13a).

Petitioner maintains that it would be impossible to get a fair and impartial trial in Horseshoe's "back yard." Further, Petitioner suggests that Congress placed a higher burden on a motion to transfer venue pursuant to 28 U.S.C. § 1404(a) for Title VII and ADA claims, or that Plaintiff is given a "greater right" to choose the venue when asserting these claims. (Pet. at 2, 4, 10, 13, 14).

---

[2] Plaintiff's choice of forum is not the controlling factor in determining whether the court can transfer the action. *Garner v. Wolfinbarger*, 433 F.2d 117 (5th Cir. 1970); *Gundle Lining Const. Corp. v. Fireman's Fund Ins. Co.*, 844 F. Supp. 1163 (S.D. Tex. 1994). In fact, courts must scrutinize a plaintiff's choice of forum more closely when the plaintiff does not live in the chosen forum. *See Dupre v. Spanier Marine Corp.*, 810 F. Supp. 823 (S.D. Tex. 1993); *Apache Products Co. v. Employer Ins. of Wausau*, 154 F.R.D. 650 (S.D. Miss. 1994); *Paul v. International Precious Metals Corp.*, 613 F. Supp. 174 (S.D.Miss. 1985). Moreover, "deference [to plaintiff's choice of forum] is lessened when the operative facts of the dispute occur outside the plaintiff's chosen forum." *Icon Indus. Controls Corp. v. Cimetrix, Inc.*, 921 F. Supp. 375 (W.D. La. 1996). The so called "home turf rule" is substantially attenuated where plaintiff has commenced the action in a forum that is not her residence. In such cases, plaintiff's choice of forum is given much less weight in ruling on a discretionary transfer motion. *Bryant v. ITT Corp.*, 48 F. Supp. 2d 829 (N.D. Ill. 1999); *Hartford Fire Ins. Co. v. Westinghouse Elec. Corp.*, 725 F. Supp. 317 (S.D. Miss. 1989); *New Image, Inc. v. Travelers Indem. Co.*, 536 F. Supp. 58 (E.D. Pa. 1981). Likewise, a plaintiff's chosen forum will be accorded little deference where it is apparent that plaintiff is engaged in "forum-shopping" and is offered an equally convenient forum elsewhere. *Reiffin v. Microsoft Corp.*, 104 F. Supp. 2d 48 (D. D.C. 2000). Any deference given the plaintiff's choice evaporates when the lawsuit has no connection to the venue chosen. *See Morgan v. Illinois Cent. R. Co.*, 161 F. Supp. 119 (S.D. Tex. 1958); *Chrysler Capital Corp. v. Woehling*, 663 F. Supp. 478 (D. Del. 1987); *Hernandez v. Graebel Van Lines*, 761 F. Supp. 983 (E.D. N.Y. 1991).

Petitioner has offered absolutely no citation or support for such an argument. Moreover, Petitioner has not asserted any evidence of favoritism towards Horseshoe in the Western District. The mere ***perception*** that local jurors would be prejudiced is not a sufficient consideration in determining whether a transfer is appropriate. *Los Angeles Memorial Coliseum Comm'n v. NFL*, 89 F.R.D. 497 (C.D. Cal. 1981).

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Honorable Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

MURPHY J. FOSTER, III
Counsel of Record
BREAZEALE, SACHSE & WILSON, L.L.P.
23rd Floor, One American Place
Post Office Box 3197
Baton Rouge, LA 70821
Telephone: (225) 387-4000
Fax: (225) 387-5397

ROBERT E. PIPER, JR.
PIPER & ASSOCIATES
624 Pierre Avenue
Shreveport, LA 71103
Telephone: (318) 226-0826
Fax: (318) 424-9900

Attorneys for Respondent,
Horseshoe Entertainment